

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

PAT JONES
Claimant

APPEAL NO: 12A-UI-08229-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 06/10/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Five Star Quality Care, Inc. (employer) appealed an unemployment insurance decision dated July 3, 2012, reference 01, which held that Pat Jones (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 1, 2012. The claimant participated in the hearing. The employer participated through Darlene Brown, human resources assistant. Employer's Exhibit One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time direct support professional on March 28, 2008, but was most recently working part-time because he was going to school. He was discharged on June 15, 2012 because the employer claimed he improperly restrained a resident on June 9, 2012 after a previous final warning. The employer is a residential facility for developmentally disabled individuals with approximately 250 employees and 102 residents or clients.

Employees are directed to use the least restrictive methods when restraining a resident and are taught the proper restraining techniques under the Mandt training system. The claimant received a final written warning on December 15, 2011 for using inappropriate restraint techniques on a female resident. No previous warnings had been issued. The claimant was sent for Mandt re-training on December 28, 2011.

The claimant was discharged on June 20, 2012 after he reportedly used an improper restraint with a female resident on June 15, 2012. This was the same resident involved in the incident

for which the claimant received a final warning. This resident is mentally handicapped/mentally retarded, has maladaptive behaviors, and is extremely aggressive. She hits other residents and goes after the weaker ones. The resident also targets the staff and has even gone after the fire alarm. She jumps around, bites, kicks and head butts others when the staff tries to restrain her.

On June 15, 2012, the resident became upset and went after another client. She tried to “rip things off a nurse’s cart” and when the claimant tried to restrain her, the resident punched him in the head, pulled his hair, ripped off his glasses, and tried to grab him in the groin. A supervisor came upon the scene and told the claimant that he was improperly restraining the resident. The claimant did tell the supervisor to step in if she thought she could do a better job. The supervisor reported the claimant had the resident in a bear hug and had her pushed up against the wall. The claimant was discharged as a result of the supervisor’s claim.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. “Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 20, 2012 for improperly restraining a resident. He denies doing anything inappropriate and was attempting to protect himself and others while restraining a violent resident. The supervisor who reported an improper restraint failed to participate in the hearing and the employer witness merely relied on a written report. The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated July 3, 2012, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw